

Avoiding Panama:

Tax Dispute Considerations for your board

1. Transaction

- In reports to the Board, document the commercial objective / business reason.
- Your Board relies on tax opinions to mitigate risk. Tax opinions depend on factual assumptions. Ensure that your organization's facts (documentation and conduct) are consistent with the assumptions in the opinions.

2. Audit

Advise your Board on how the organization is:

- Avoiding the waiver of privilege in documents provided to the CRA.
- Managing reputational and legal risk by properly collecting and preserving relevant records (consider a litigation hold memo).
- Managing the cost of document production in the tax dispute life cycle by collecting documents methodically and keeping a record of documents produced to the CRA.

3. Objection

Advise your Board on:

- Timelines: Beware of the large corporation rules and filing deadlines.
- Strategic Choices: Consider whether engaging with Appeals creates an opportunity to settle the dispute. If there is little chance of settlement, consider expediting litigation.

4. Litigation

Advise your Board on:

- Reputational Implications: Consider and plan for reputational implications of public proceeding.
- Costs: The two largest costs in litigation are discoveries (documentary and examinations) and trial. To manage costs:
 - Leverage document collection from audit for documentary discoveries; and
 - Agree to a discovery plan with the opposing party.
- Timelines: Consider using judicial case management to create a timeline and impose discipline on discoveries. Often settlement discussions will not occur until discoveries are complete.

